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**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

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**FEB 17 2004**

PUBLIC SERVICE  
COMMISSION

In the Matter of:

APPLICATION OF MALLARD POINT )  
DISPOSAL SYSTEMS, INC. FOR 1) A )  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY TO CONSTRUCT THE )  
PROPOSED WASTEWATER IMPROVEMENT )  
PROJECT; AND 2) THE APPROVAL OF THE )  
PROPOSED PLAN OF FINANCING )

**CASE NO. 2003-00283** ✓

In the Matter of:

APPLICATION OF MALLARD POINT )  
DISPOSAL SYSTEMS, INC. FOR AN )  
ADJUSTMENT OF RATES PURSUANT )  
TO THE ALTERNATIVE RATE FILING )  
PROCEDURE FOR SMALL UTILITIES )

**CASE NO. 2003-00284**

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**POST HEARING BRIEF**

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Comes now the Applicant Mallard Point Disposal Systems, Inc. (Mallard Point), and submits its Post Hearing Brief.

Mallard Point has been providing wastewater treatment for the residents of Mallard Point Subdivision *et al.*, since 1986. Mallard Point's wastewater treatment facilities consist of an original 50,000 g.p.d. plant, which was used to treat wastewater until the mid-90's when its 100,000 g.p.d. plant came on-line, at which time the original 50,000 g.p.d. plant was converted over to the storage of sludge and aeration. Mallard Point has enjoyed good success with the quality of its wastewater effluent and has suffered few customer complaints over the years.

Because of the rising demand for wastewater treatment necessitating a return of the 50,000 g.p.d. plant from wastewater storage to treatment, the increasing age of its facilities,<sup>1</sup> and

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<sup>1</sup> Despite assertions to the contrary, Mallard Point's facilities have not been neglected and are not in poor repair as a result of failure to perform routine maintenance. Rather, its 50,000 g.p.d. plant is an aging structure that

the increasing inability to cover its operating expenses, Mallard Point contacted the Public Service Commission (PSC) in the Summer of 2003 inquiring into the possibility of renovating its 50,000 g.p.d. plant and adjusting its rate to cover the increased costs. At the request of the PSC Staff, Mallard Point provided it with, *inter alia*, its bank statements and cancelled checks for the year 2002. Mark S. Smith, President of Mallard Point, also met with PSC Staff on several occasions to discuss those bank records and provided additional information necessary for the preparation of its applications. Mallard Point ultimately filed two (2) applications with the PSC: 1) requesting a Certificate of Public Convenience and Necessity for the renovation of its 50,000 g.p.d. wastewater treatment plant and approval for its proposed plan of financing; and 2) for an increase in its flat residential rate from \$31.10 to \$45.16 pursuant to 807 KAR 5:076.

Thereafter, the Attorney General and several individual ratepayers were granted full intervention, data requests were exchanged and, upon the close of discovery, the PSC Staff issued its Staff Report recommending an adjusted rate of \$37.39. The Staff recommended this rate after several expense items were either significantly decreased or disallowed altogether due to Mallard Point's poor recordkeeping. In its written comment to the Staff Report, Mallard Point acknowledged the PSC Staff's admonishment, accepted responsibility for the consequences, and consented to the Staff's recommendation. Nonetheless, Intervenors Faircloth, Wahus, Marlowe and vander Gaag requested a hearing on Mallard Point's failure to maintain adequate business records, and the appropriateness of certain of its attorney's fees. Neither those concerns, nor the amount of its chemical and maintenance costs should prevent Mallard Point from receiving the rate of \$37.39 recommended by the PSC Staff.

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is at the end of its 20-year life expectancy. There is no evidence that Mallard Point has failed to routinely maintain its facilities.

First, Mr. Smith's failure to maintain adequate business records and segregate his personal finances from those of Mallard Point jeopardized only Mallard Point and not the ratepayers. The PSC Staff was unable to conduct a complete financial review of Mallard Point's operations in the past because Mallard Point had failed to sufficiently maintain its financial records. Following a 1997 Audit Staff financial audit for the year 1996, Mallard Point agreed to Audit Staff's recommendations to reconcile its bank account, maintain vendor invoices, and to refrain from commingling its money with that of its officer, Mr. Smith.

Mr. Smith testified that he performed this agreement for a couple of years, and felt he did so well, but that he ultimately quit because he was unable to keep up with a growing business that was quickly outstripping its humble beginnings.<sup>2</sup> Mr. Smith testified that, through this rate proceeding, he has now recognized the necessity of segregating Mallard Point's business from his own, both physically and financially, and the importance of computerizing Mallard Point's operations, reconciling its accounts, and keeping copies of its vendor invoices. Mallard Point has commenced doing so as of January 1, 2004.

Mr. Smith testified that he was careful to exclude non-utility related expenses from Mallard Point's adjusted rate, specifically, certain checks payable to Straffen Sales, American Express, and Southern States. He testified that although some of those checks were undoubtedly for utility related items, he voluntarily removed them from consideration because he was unable to produce vendor invoices in support of those expenditures. Had Mr. Smith maintained the necessary documentation for those expenses, Mallard Point would have been able to establish the benefit of those expenditures to the ratepayers and could have included them into its rate application.

Second, the sums allocated for chemicals and maintenance supply costs are adequately supported and should be included in Mallard Point's rate calculation. Mr. Smith testified that Mallard Point relies upon a handful of contractors to perform its day-to-day operations. Two of those contractors are Noel Norton, who is the certified operator of Mallard Point's facilities, and Charlie Hanson, who is responsible for all daily maintenance around the plant.<sup>3</sup> Both individuals are ordinary and necessary to the service Mallard Point provides. Both are paid a flat rate salary commensurate with their job duties and are reimbursed for any out-of-pocket expense they incur on behalf of Mallard Point. The clean and continuous operation of Mallard Point's facilities establish that during 2002 Mr. Norton purchased chemicals and used them at the plant,<sup>4</sup> and that Mr. Hanson purchased belts, motors, and grease to maintain the plant's equipment.<sup>5</sup> Mr. Smith testified that during 2002 those individuals performed their work, they were paid, and there were no problems. However, Mallard Point did not request or keep any of the invoices against which those individuals were reimbursed. Indeed, Mr. Smith testified that, heretofore, he has not required Messrs. Norton or Hanson to provide him with an invoice prior to reimbursing them for a utility expense. Since January 1, 2004, however, Mallard Point has instituted a policy

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<sup>2</sup> Mallard Point has been successfully providing service to the residents of Mallard Point Subdivision *et al.*, since 1986 out of Mr. Smith's home and truck, with a handful of independent contractors, without an office location, equipment, or support.

<sup>3</sup> Mr. Smith also testified that, while Mr. Hanson is on call at Mallard Point 24/7/365, he works for other people as well, including Mallard Point Services, a sole proprietorship owned by Mr. Smith, and that Mallard Point Services pays Mr. Hanson separately for the work he performs for it. There is no evidence that Mallard Point pays Mr. Hanson for the work he performs for Mallard Point Services.

<sup>4</sup> Mr. Smith testified that the \$2,650.00 sum paid by Mallard Point to Mr. Norton in excess of his routine maintenance fee represents the reimbursed chemical expense. Realizing that Mallard Point incurred a chemical cost during the test period – as supported by its discharge reports – and that such an expense was beneficial to the ratepayers in furnishing utility service, the Staff recommended Mallard recover that sum in its rate.

<sup>5</sup> Mr. Smith testified that the Staff determined from its review of Mallard Point's cancelled checks that it had paid the sum of \$5,146.00 to Mr. Hanson for reimbursement for those expenses. Again, realizing that, given the age of Mallard Point's facility, it incurred maintenance supply costs during the test period for oil, belts, grease, piping, etc. and that such an expense was beneficial to the ratepayers in furnishing utility service, the Staff recommended Mallard recover that sum in its rate.

requiring presentation of a paid invoice prior to any such reimbursement. Nevertheless, both the \$2,650.00 allocated for chemicals and the \$5,146.00 for maintenance supply costs are adequately supported and should be included in Mallard Point's rate calculation.

Finally, Mallard Point should be entitled to recover for the time spent by its legal counsel during this proceeding, including that spent at the annual meeting of the Mallard Point Owners' Association.<sup>6</sup> The total \$23,046.16 legal cost incurred to date – the lion's share of which was attributable to discovery responses and motion practice with the Intervenor – is adequately supported in the record and should be included in Mallard Point's rate calculation.

### CONCLUSION

For all of the foregoing reasons, Mallard Point submits that the PSC Staff Report recommending a flat residential rate \$37.39 is fair, just and reasonable, and it respectfully requests that the PSC adopt the same, provided, however, Mallard Point further requests that the PSC also include in that rate the additional attorney fees incurred by it during this proceeding but not taken into account by the PSC Staff Report.

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ATTORNEYS FOR MALLARD POINT  
DISPOSAL SYSTEMS, INC.

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<sup>6</sup> Counsel's presence was required at the annual meeting because most if not all of the Intervenor had alleged here that Mark S. Smith, as President of Mallard Point, which was requesting a rate increase, and the Mallard Point Owners' Association, which represents the owners/ratepayers, was caught in a conflict of interest. Consequently, it was prudent for counsel to be in attendance in order to respond to any inquiry by those same Intervenor or to any discussion by the group assembled about that conflict or this proceeding.

## CERTIFICATE OF SERVICE

I hereby certify that an original and ten (10) copies hereof was mailed, postage prepaid, by United States mailed, to the following:

Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, Kentucky 40602-0615

and that a copy of the foregoing was mailed, postage prepaid, to the following:

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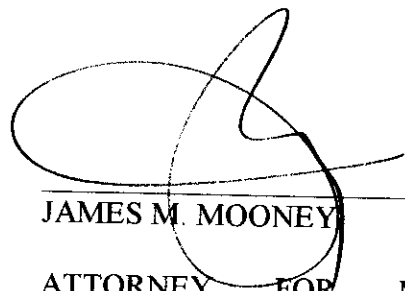
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on this the 13<sup>th</sup> day of February, 2003.



JAMES M. MOONEY

ATTORNEY FOR MALLARD POINT  
DISPOSAL SYSTEMS, INC.